

NOV 15 2005

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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**PRE-APPEAL BRIEF REQUEST FOR REVIEW
as Express Mail No. EV544475511US**

Docket Number (Optional)

P5783

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on November 11, 2005 11/15/05

Signature Kent A. Lembke

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Application Number

09/780,038

Filed

02/09/2001

First Named Inventor

Michael J. Wookey

Art Unit

2124

Examiner

William H. Wood

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record.Registration number 44,866 attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

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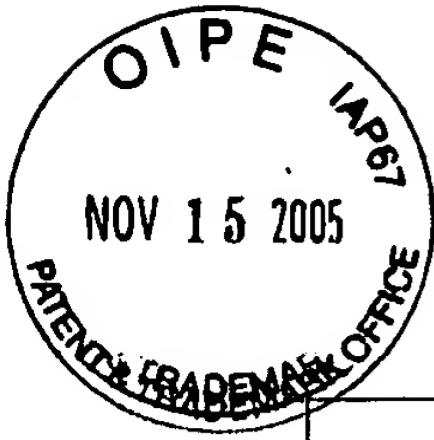
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
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*Total of _____ forms are submitted.

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Client Matter No. 80168.0242
Express Mail No. EV544475511US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. 09/780,038	Confirmation No.: 8444
Application of: Michael J. Wookey	Customer No.: 32658
Filed: February 9, 2001	
Art Unit: 2193	
Examiner: WOOD, William H.	
Attorney Docket No. P5783	
For: NETWORKED INSTALLATION SYSTEM FOR DEPLOYING SYSTEMS MANAGEMENT PLATFORMS	

ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the final Office Action mailed June 16, 2005 and the Advisory Action mailed November 1, 2005, Applicant requests that the claim rejections be reviewed prior to the filing of an Appeal Brief for the reasons provided in the following paragraphs.

Issues for Review

Applicant believes there are clear errors in the Examiner's rejections that should be reviewed and that such a review will show that the cited references do not support a *prima facie* obviousness rejection. The issues for review do not involve determining what a reference teaches but instead involve determining whether what is taught by the reference as construed by the Examiner supports a *prima facie* rejection of claims based on obviousness.

In the final Office Action dated June 16, 2005, claims 1-8, 10, 11, 14, 16-18, 20, and 22-24 under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 5,752,042 ("Cole") in view of U.S. Pat. No. 6,434,532 ("Goldband") and in further view of U.S. Pat. No. 5,247,683 ("Holmes"). This rejection was retained in the

November 1, 2005 Advisory Action with little or no explanation, and a reviewable issue is whether the software “versions” of Holmes fail to show the claimed “thresholds” that are used in configuration operations.

As stated in Applicant's July 16, 2005 Amendment, independent claims 1 and 23 call for the computing environment information to include thresholds based on the configuration of the host device and the “automated configuring comprises modifying the installed software payload based on the thresholds” (for claim 1). Claim 23 further calls for the thresholds to be calculated by the survey tool installed in the host device. The final Office Action refers briefly to version information with reference to Holmes. However, Applicant asserts that version information does not teach the “thresholds” of claim 1 and hence, the Examiner has failed to state a *prima facie* rejection under 35 U.S.C. §103. The Response to Arguments in the final Office Action states that the Holmes' version information teaches thresholds as thresholds are merely numbers not to be exceeded. Applicant disagrees that a version number could be considered a threshold for use by systems management software, i.e., the payload being installed on the host device, as claimed.

This can be further understood when “version” is used in place of “threshold” in other portions of claims 1 and 23. For example, claim 1 calls for modifying the installed software payload “based on the thresholds” simply would not make sense if the threshold was a version number, i.e., you would select a version of a software payload for installation but not modify installed software to be a second version.

Claim 23 calls for the thresholds to be “calculated”, and there is no reason to calculate a version number with a survey tool as it can simply be read (but, a software version on a host device may be read and used in calculating or selecting a threshold for systems management software or at least in use in selecting an agent to download). Holmes is also cited for teaching the threshold determination and use, but Holmes at col. 1 lines 26-28 and 35-38 discusses drivers and buffers. This provides no suggestion of thresholds that are gathered and/or collected by a survey tool and then used in configuring installed systems management software based on such thresholds. Further, as discussed above, Holmes fails to teach

configuring or modifying installed software to suit a workstation but instead teaches changing the configuration of the workstation to suit the installed software, and hence, Holmes does not provide any relevant teaching for configuring installed software and particularly, based on thresholds. Because each of the calculation of and use of thresholds for modifying features are not shown in the combined teaching of Cole, Goldband, and Holmes, the obviousness rejection based on these references should be withdrawn for claims 1 and 23. Applicant believes this is clear error that can be readily reviewed and overturned at the pre-appeal brief stage.

Further, independent claims 1, 7, 14, 18, and 23 each include limitations that require that the installed software payload be configured or modified based on the computing environment information. With the Office Action dated December 22, 2004 and as repeated in the June 16, 2005 Office Action, the Examiner indicates that Cole fails to teach that the installed software payload is configured based on computing environment information. However, in rejecting claims 1 and 11, the Examiner asserts that Holmes teaches configuring an installed software payload based on the host device computing environment in Figure 3, element 58, col. 1, lines 26-28 and 35-38 and in the Response to Arguments of June 16, 2005, the Examiner maintains this assertion by stating that configuring software is shown in Figure 3, element 32 ("Build file for new software."). However, the cited step 32 is described in col. 5, lines 32-41 as "the configuration build file associated with that new software file is read", with the new software file being "transmitted to the workstation." A reviewable issue is whether the Holmes' teaching provides proper support for an obviousness rejection of claims 1, 7, 14, 18, and 23 or whether this reference also fails to teach that the installed software payload is configured based on computing environment information as asserted by Applicant.

Holmes fails to teach or even suggest that installed software is loaded to suit the host device or system and then configured to suit that host device or system. Instead, Holmes clearly describes reconfiguring the host device itself to be able to run the software. This is a very different solution to the problem of how to get loaded software to operate, and it is not applicable to the loading and running of

systems management platforms which need to manage an operating device or system and typically cannot be installed “as is” with bugs and problems often needing to be resolved (for example, read Applicant’s statement of the problem being addressed by his invention at page 2, line 29 to page 4, line 28 of the specification). Hence, Holmes does not teach that the installed software payload be configured or modified based on the computing environment information as called for in claims 1, 7, 14, 18, and 23, and Applicant requests that the rejection of these claims based on Holmes, Cole, and Goldband be withdrawn.

More specifically, Holmes in the first paragraph of its Summary describes transmitting software with a configuration build file to a system, finding other software configuration build files, combining the configuration build files, and “reconfiguring said workstation using said composite configuration build files” (emphasis added). There is no discussion here or elsewhere in Holmes of modifying the transmitted software but instead the workstation is configured to be able to run the software. As a further example, at col. 4, lines 54-68, Holmes describes configuring the device buffers to meet the needs of the installed software but does not discuss altering the installed software to suit the device computing environment. Note, the configuration build file defines the requirements of the software and is not developed to suit the workstation. Hence, Holmes fails to support a *prima facie* rejection of claims 1, 7, 14, 18, and 23.

Another reviewable issue is whether the Examiner impermissibly ignored claim language in rejecting independent claim 7. In the Response to Arguments of the December 22, 2004 Office Action, the Examiner states that it is immaterial whether a client is involved, but this argument ignores the language of claim 7 that calls for an installation station and the use of a survey tool and an installation tool at the managed hosts to perform remote installation. The Response to Arguments of the June 16, 2005 Office Action, states that in a broadest interpretation of the claim 7 language only requires remote installation managed by “something” and the “something” was argued to be shown by the cited portions of Figures 1 and 2 of Cole. However, Applicant believes this is clear error

that should be reviewed and overturn. As discussed in the Amendment filed July 16, 2005 on page 12, Cole teaches that installation is performed solely by the download routine and service application in the client 14 (see Figure 1 and corresponding text), and Applicant could find no management of installation outside of the client at all, i.e., Applicant could not find the "something" let alone a teaching of an "installation station" and use of installation sessions to manage installation remotely. For these reasons, each element of claim 7 is not shown by the combination of Cole, and the rejection of claim 7 should be withdrawn as improperly supported by the references.

Applicant further requests review of the non-entry of the amendment after final because it only corrected a claim dependency in claim 22, which would place the case in better condition for use on Appeal and does not raise any new issues.

When these issues are resolved, Applicant believes that all the pending claims, i.e., claims 1-5, 7, 8, 12-14, 16-18, 22, 23, and 25, are in condition for allowance and continuance with an Appeal is unnecessary.

Conclusions

In view of all of the above, Applicant respectfully requests that a review panel review the Examiner's rejections and produce a finding that there are no actual issues remaining for appeal and that the application is allowed.

A check is provided for the fee associated with a filing of a Notice of Appeal and a 1-month extension of time. Additionally, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

Respectfully submitted,



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November 15, 2005